

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

MADISON STUTLER,

Plaintiff,

vs.

MATT CASSABAUM,

Defendant.

Case No. 17-CV-265-TCK-FHM

OPINION AND ORDER

Defendant has filed two motions concerning the testimony of Dr. Jorge Gonzales: Defendant's Second Motion to Strike, [Dkt. 33], and Defendant's Daubert Motion to Limit the Testimony of Jorge Gonzalez, [Dkt. 40]. Although there is considerable overlap in the assertions in these motions, generally the Motion to Strike addresses Dr. Gonzales' testimony as a retained expert while the Daubert Motion addresses the scope of Dr. Gonzales' testimony as a treating doctor. Only the Motion to Strike, [Dkt. 33], is before the undersigned United States Magistrate Judge. The motion has been fully briefed, [Dkt. 33, 38, 42].

Defendant contends that Dr. Gonzalez should not be permitted to testify as a retained expert because no expert report was provided as required by Fed.R.Civ.P. 26(a)(2)(B). Plaintiff responds that an expert report was not provided because Plaintiff does not intend to offer any testimony from Dr. Gonzales as a retained expert. Plaintiff represents that Dr. Gonzales' testimony will be limited to testifying as a treating doctor.

Based on Plaintiff's failure to provide the expert report required by Fed.R.Civ.P. 26(a)(2)(B), Defendant's Second Motion to Strike, [Dkt. 33], is GRANTED to the extent that Plaintiff will be prohibited from offering any testimony by Dr. Gonzales as a retained expert.

The appropriate scope of Dr. Gonzales' testimony as a treating doctor and medical records that may be admitted will be decided by the trial judge

SO ORDERED this 1st day of May, 2018.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE